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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

21 Cr. 190 (JPO)

6 KAITLYN RIVERA,

7 Defendant.
8 -----x

9 New York, N.Y.
10 September 20, 2023
11 12:00 p.m.

12 Before:

13 HON. J. PAUL OETKEN,

14 District Judge

15 APPEARANCES

16 DAMIAN WILLIAMS,
17 United States Attorney for the
18 Southern District of New York
19 BY: REBECCA DELL
20 Assistant United States Attorney

21 PATRICK J. JOYCE
22 Attorney for Defendant

23 ALSO PRESENT:
24 Jake Drucker, AUSA Intern

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1 (Case called)

2 MS. DELL: Good afternoon. Rebecca Dell on behalf of
3 the government. I'm joined by an intern in our office, Drake
4 Drucker.

5 THE COURT: Good afternoon.

6 MR. JOYCE: Good afternoon, your Honor. My name is
7 Patrick Joyce. I represent Kaitlyn Rivera, who is present and
8 seated to my right. I would also note that Ms. Rivera's
9 mother, who submitted a letter, is also in the courtroom.

10 THE COURT: Good afternoon. Thank you.

11 We're here for sentencing in this case. Ms. Rivera
12 pleaded guilty to possession of child pornography, and I want
13 to start by making sure I received and reviewed everything I
14 should have.

15 I reviewed the presentence report; defense counsel's
16 submission, dated September 1st, with letters from family
17 members; also an evaluation report by Dr. Cruger; and the
18 Yonkers police report that's attached, all of which I read; and
19 then the government's submission, dated September 13th, with
20 the WhatsApp chat transcript.

21 Do I have everything I should have from the
22 government?

23 MS. DELL: Yes, your Honor.

24 THE COURT: And the defense?

25 MR. JOYCE: Yes.

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1 THE COURT: Mr. Joyce, do you have any objections to
2 the presentence report?

3 MR. JOYCE: No.

4 THE COURT: And does the government?

5 MS. DELL: No.

6 THE COURT: I adopt the facts in the presentence
7 report as my findings per sentencing.

8 The starting point is the sentencing guidelines, which
9 are advisory and not mandatory. In this case, the presentence
10 report calculates a guidelines sentence that is consistent with
11 the plea agreement, and I find that that is correct, and I
12 adopt paragraphs 75 to 92 to the presentence report. The total
13 offense level is 39, defendant has no criminal history, and
14 therefore the guideline range is 240 months, which is the
15 statutory maximum.

16 I read all your submissions, but I'd like to give you
17 a chance to speak, starting with Mr. Joyce.

18 MR. JOYCE: Thank you, your Honor.

19 Quoting from paragraph 110 of the probation report,
20 Ms. Rivera disclosed having the following tattoos: "Gabriel"
21 inscribed with a rose on top of her left foot; "Gabriel"
22 inscribed on the side of her right knee; a "G" heart and "K"
23 inscribed behind the left ear; September 14th, 2017, in Roman
24 numerals on the back of her neck; November 30th, 1993 in Roman
25 numerals on her upper right arm; and "Gabriel" inscribed

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1 vertically on the right side of her neck. She explained that
2 her former boyfriend brought her to tattoo parlors and forced
3 her, through threats and violence, to get tattoos of his name,
4 his birthday, and the date of their first date. The defendant
5 would like to remove these and cover these in the future.

6 It may seem like an odd place to start, but, your
7 Honor, I wanted to address immediately what seems to be the
8 concerns both of probation and the government. We know where
9 the guidelines are and we know what the statute says the Court
10 is supposed to consider, but probation suggests that four
11 years' incarceration would be a reasonable sentence and the
12 government says at least two years. We believe that any
13 incarceration is greater than what is necessary to achieve the
14 goals of sentencing.

15 What appeared over and over again was this concept
16 that Ms. Rivera was somehow minimizing her conduct, that she
17 didn't say certain things to Dr. Cruger or that in our letter
18 we were suggesting that she was manipulated. What we tried to
19 do, Judge, is get the Court to understand who she is. I'm not
20 going to repeat the details in the reports about what happened
21 to her when she was younger or what I just mentioned about the
22 type of abuse she has survived that brought her to the age of
23 22 when, I would call a master manipulator, Johnny Roman got a
24 hold of her.

25 The reason why we start that way, Judge, is because

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1 everyone agrees, a horrific act, awful. What makes the case so
2 difficult is someone like her and I think some of the other
3 people in this case have never done anything wrong before in
4 their life, and now, all of a sudden, they go from zero to
5 8,000. So how do we understand that? How do we grasp it? The
6 point is, she was brought to that point at age 22 in her life
7 susceptible to certain things, and I suggest not by way of
8 excusing the behavior, but because we want to try to understand
9 the behavior.

10 And then I suggest when the Court gets to that point,
11 the statute that also says -- so let's look at 3553(a), what
12 are the factors the court must consider, and it's not just the
13 characteristics of the offense, it's also the characteristics
14 of who Ms. Ms. Rivera is as she sits here today. And again,
15 all that we mentioned in the report, which I won't repeat
16 today, is what brought her and brings her here today, but
17 there's so much more.

18 The event occurs in May of 2020, she does not get
19 arrested until April of 2021. She has committed no
20 infractions, no -- she doesn't even jaywalk, she gets in no
21 trouble. In fact, the Court knows, she's never been in trouble
22 but for this one hour of her life, hour and a half when she did
23 this awful thing. She's never done anything wrong in her life.
24 But oftentimes a defendant will come before a judge and say,
25 well, I got arrested and now I turned my life around. This

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1 situation is that she didn't even get arrested. She did that
2 event, felt awful about it, and what we can see in the printout
3 that's the exhibit that the government has put forth is this.
4 I think she says, oh, let's do some more or something of that
5 nature, but she comes to her senses, and what she actually does
6 is, on May 20th, she convinces this individual to give her an
7 address thinking that she's going to go drive there, and as
8 soon as she gets the address, she calls the Yonkers Police and
9 she makes the report about what's going on, and she gives them
10 the address.

11 THE COURT: But isn't that because she didn't get
12 paid?

13 MR. JOYCE: Not when she calls the police, Judge.
14 When she calls the police, it's because she now has realized
15 this was awful, this was not right. I agree that when the
16 first time they stopped, she realized she wasn't going to get
17 paid, but that wasn't her only motivation, because if it was,
18 Judge, I would suggest she might have gone onto some other type
19 of illegal activity to try to make money, and the fact is, in
20 this situation, that's not what happened. Not only did she not
21 go back to that type of activity, she went to no other type of
22 illegal activity.

23 What we know is that from the day that she was
24 arrested, she had her job, she was put on a bracelet — what she
25 does is medical billing — and she had that job until January of

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1 2022. She lost it because of the bracelet. What happened is
2 her workers caused problems for her, they started making
3 comments about her. It just wasn't going to work for her to
4 stay there. So you could think, okay, she lost her job, maybe
5 she'll do nothing with her life. In fact, she went out, she
6 got an offer from another medical billing outfit. She talked
7 to pretrial about that job. There were questions about whether
8 there was going to be internet access, and so she couldn't take
9 it immediately, but she still has that offer open. So, if the
10 Court, we're hoping, doesn't send her to jail, after she leaves
11 here today, she's going to continue to work with now probation,
12 no longer pretrial, and try to obtain that job so that there
13 can be some type of monitoring of her medical billing.

14 What also happened is she came to some conclusions
15 about her life. It was Ms. Rivera who said "I need therapy."
16 I'm not going to suggest, and the report shows, she hasn't been
17 great with therapy, but I also like to think about the Ted
18 Lasso show where the therapist says the truth will set you
19 free, but first it's going to use --

20 THE COURT: What is it?

21 MR. JOYCE: The truth will set you free, but first
22 it's going to -- and she says basically make you very mad.

23 The point is, therapy is difficult. It's difficult
24 for anybody. For someone who's 23, 24, 25, it's not the
25 easiest thing, but Ms. Rivera asked for therapy and she went

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1 into therapy, and the report says she's is hoping to continue
2 to get therapy.

3 What we also know, Judge, what happened since this
4 event is that she married a man that she met and she became a
5 tremendous caretaker to that person's mother. Now, her
6 husband's not here today because he is taking care of her. She
7 has physical ailments and he's taking care of her and he
8 couldn't be here, but he did offer the support, and the
9 mother-in-law offered the letters that showed how attentive
10 Ms. Rivera has been.

11 What we also know, Judge, and I would suggest that
12 it's very clear not from just the report, but Dr. Cruger I
13 think makes it very clear, Ms. Rivera is not a pedophile. This
14 is definitely a one-off. This is something that happened in a
15 certain circumstance, it's not going to happen again.

16 The Court has many factors to consider, and I won't go
17 over all the specifics about general deterrence or specific
18 deterrence. I will suggest, Judge, I'm aware of yesterday's
19 sentence, and I do know the Court is bound by statute to avoid
20 unwarranted disparities. So we again think that that's a --
21 suggests that the Court should sentence Ms. Rivera to a
22 non-jail sentence.

23 But I think what we have to do is be honest about the
24 statute and what we have, because, really, it's about
25 punishment, and the question is: What's enough punishment for

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1 that activity? What's enough punishment for an hour and a half
2 of some of the worst acts anyone can ever commit?

3 So we do know that she lost her job. We do know that
4 she has not been able to see her family because her brother is
5 there, there's been no way for her to be able to see or be in
6 her family home. And she has not seen her brother, who she had
7 had a very good relationship with, and I think Ms. Rosado wrote
8 and said that he misses her. We do know that in the future,
9 although the government suggests everyone convicted is going to
10 get this, they seem to minimize it, what it is to be a sex
11 offender and to be in that sex offender registry and to be a
12 sex offender for the rest of your life. She's been able to
13 obtain a job and have a job going forward, but if she doesn't
14 obtain that job and get that job, we know that when someone
15 does a background check, it's going to be very difficult for
16 her to obtain employment.

17 What we know about the jails, Judge, one day, one
18 month, one year, two years, is we know they're in terrible
19 shape right now. We know they will offer no mental health
20 treatment for her. We know that there will be no
21 rehabilitation, there will be no training for employment. So
22 she's already made the steps to try to rehabilitate going
23 forward. My suggestion is that to send her to jail will derail
24 that and will actually then impact so much more of that aspect
25 of the statute that talks about rehabilitation.

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1 Your Honor, it's unfortunate at times that the court
2 system is set up the way it is, and I know in this courtroom,
3 usually, the pleas are taken here. Under this circumstance for
4 some reason with scheduling, we went to magistrate court to
5 take the plea. The suggestion that Ms. Rivera is not
6 remorseful or is somehow minimizing her role in what happened
7 is totally belied what happened that day, Judge, and she in her
8 own words will tell you what she would like to say to the
9 Court. I will tell you she sits here before you right now a
10 25-year-old who is hoping to get her life straight.

11 Thank you, Judge.

12 THE COURT: Thank you, Mr. Joyce.

13 Ms. Dell, I read the government's submission and the
14 attachment, which is the transcript of the WhatsApp chats.
15 Anything you'd like to add today?

16 MS. DELL: Yes, your Honor. I just want to respond to
17 a couple of points that the defense counsel said here.

18 I believe one of the points he raised was about the
19 police report that Ms. Rivera filed after the incident after
20 she committed this conduct. There's really no evidence that
21 she was trying to collect his address so that she could report
22 it to the police, but even if that is the case, I don't have
23 the police report in front of me, but my recollection is that
24 she did not admit to her own conduct to the police, and I think
25 that's an important point to make.

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I also want to address the real seriousness of the offense, and this will go toward the point of any concern about unwarranted sentencing disparities. I think there are distinctions between the case from yesterday and the case today.

Now, one thing to note is that we do have the chats with Roman in this case, and yesterday we did not have the chats with Roman, we just had the chats with Ashley, so it's a little hard to compare apples to apples. But here, we do have the chats with Roman, and it is very clear that there were no threats made toward Ms. Rivera prior to her performing oral sex on her 10-year-old brother, that she was aware that he was uncomfortable, she was aware that it was tough for him, that he was crying, and nevertheless she performed this conduct, and once she was done, as the Court is aware, she was ready to do it again. And unlike the victim yesterday --

THE COURT: You said that she said she was ready to do it again in the chat?

MS. DELL: Correct.

THE COURT: We don't know that she was ready to do it again.

MS. DELL: Correct.

THE COURT: Separate from that.

MS. DELL: Correct. She said something along the lines of, "Honey, we'll make better videos for you in the

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1 future. I'll talk to him."

2 THE COURT: Right.

3 MS. DELL: There was no evidence of that in
4 yesterday's sentencing.

5 The one other difference that I would point out is
6 that yesterday's victim was an infant, and obviously that's
7 extremely horrific.

8 THE COURT: I've been thinking a lot about that, the
9 difference -- I mean, sexual abuse is sexual abuse of a child,
10 but I do think it is more culpable behavior to abuse a
11 10-year-old I think than to abuse a 1-year-old. I haven't done
12 the research on this, but I think the chances of the memory
13 causing significant harmful effects are greater with a
14 10-year-old. Is that the point you're making?

15 MS. DELL: That was the point I was going to make,
16 that the 10-year-old will unfortunately have this memory
17 forever. I hope it doesn't impact him going forward, but that
18 is another distinction between today's case and yesterday's
19 case.

20 And unless the Court has other questions for me, I
21 rest on our submission.

22 THE COURT: Is there restitution and forfeiture at
23 issue in this case?

24 MS. DELL: I don't believe there's forfeiture. If we
25 didn't seek forfeiture at the time of the plea, we're not

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1 seeking forfeiture now, and I don't think we did at the time of
2 the plea.

3 With respect to restitution, we've received no claims
4 of restitution from the victim.

5 THE COURT: Okay. I want to give Ms. Rivera a chance
6 to speak if she would like to. You're not required to speak or
7 say anything, and of course I read the transcript of the guilty
8 plea allocution before the magistrate judge and I know it was
9 difficult, but anything you'd like to say, you're welcome to do
10 so now.

11 THE DEFENDANT: Thank you.

12 Your Honor, I stand before you today with deepest
13 regrets from my actions. On May 14, 2020, the behavior that I
14 engaged in is in no way a glimpse of my character. To date, I
15 am still severely affected by my own actions, and that is by
16 far my worst consequence.

17 I have found it hard to leave my home or to allow
18 myself to be happy. I often feel like broken goods, not worthy
19 of life beyond this terrible time. I have found it impossible,
20 near impossible to place myself under another employer who will
21 see nothing past my ankle monitor as my previous employer did.

22 I live in fear of the image of what my life would be
23 like for 10 years on the registry for all of the world to see
24 and how I'll never feel normal again. I robbed myself of
25 freedom, but I am not selfish, and I know I can handle that one

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1 day at a time. Throughout the two to three years that this
2 case has taken to get to this date, I have learned beyond
3 myself what my actions meant.

4 The pain I have come to know is in the realization
5 that no matter what I have suffered in these years and will in
6 the years to come, that I cannot escape acknowledging that my
7 actions have also impacted my family. My mother who sits
8 behind me, whose suffering is equal to mine, my father,
9 relatives that I stay away from due to my own shame, my husband
10 and, most importantly, my brother Lewis. In the sorrow, I have
11 found some gratitude that I can still be loved by those closest
12 to me.

13 Your Honor, I stand before you a broken young woman
14 trying to find her place in this world in piecing this all
15 together, learning to love myself, learning to be a better
16 daughter, a better wife, and a better sister, returning the
17 loyalty and the love to those who have stood by me in my
18 darkest days. I take full responsibility for my actions that
19 have brought me before you today. I stand before you begging
20 to be heard in desperate need of a second chance to fix my
21 life, enjoy working again, and growing as an individual, but
22 also to be better, not only for me, but for who those close to
23 me that I owe my life.

24 Thank you.

25 THE COURT: Thank you.

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1 Is there any reason sentence may not be imposed at
2 this time?

3 MS. DELL: No, your Honor.

4 MR. JOYCE: No.

5 THE COURT: In preparing to sentence Ms. Rivera, I've
6 considered the presentence report, probation's recommendation,
7 and the written and oral statements of defense counsel and the
8 defendant and the government, as well as the letters submitted
9 in support of the defendant and the other information that's
10 been provided.

11 My decision is controlled by a law, Section 3553(a) of
12 Title 18, which requires me to consider several factors,
13 including the sentencing guidelines, but not only the
14 sentencing guidelines, and they are advisory.

15 Now, the guidelines in this case call for an extremely
16 long sentence, 20 years. No one's arguing that the defendant
17 deserves a sentence of 20 years. What really governs the
18 decision is the purposes of sentencing as well as the nature
19 and circumstances of the crime and the defendant's history and
20 characteristics. The purposes are the need to reflect the
21 seriousness of the crime, to promote respect for the law, and
22 provide just punishment for the offense, and to afford adequate
23 deterrence to criminal conduct, both specific deterrence and
24 general deterrence, and finally to provide any training or
25 treatment toward rehabilitation. I am also required to

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1 consider unwarranted sentencing disparities, and of course I
2 sentenced the codefendant in the case yesterday. I'm
3 ultimately required to impose a sentence that is sufficient but
4 not greater than necessary to comply with the purposes in the
5 statute.

6 I've been thinking a lot about this case, and this is
7 one of the hardest ones I've dealt with. This is serious
8 criminal conduct, conduct that involved the sexual abuse of the
9 defendant's 10-year-old brother for money, not because she's a
10 pedophile, not because she had some tendencies in that
11 direction, because she was manipulated by a codefendant,
12 Mr. Roman, and she was willing to do it. The codefendant
13 certainly played an important and manipulative role leading to
14 the defendant's decision to engage in the conduct, but
15 ultimately the defendant made the choice and was actually
16 willing to do it, to sexually abuse a 10-year-old minor, and
17 that is serious criminal conduct.

18 The defendant is 25 years old. She was 22 at the time
19 of the criminal conduct. She had no criminal history. There
20 are mitigating factors there, including the fact that she faced
21 significant challenges growing up, including abuse at a young
22 age and an abusive relationship later, and these are mitigating
23 factors and risk factors.

24 As I said, I am persuaded by Dr. Cruger's report that
25 she's not a pedophile, she's not at high risk of reoffending.

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I don't think this is a case where the public needs to be protected from the defendant. And I believe she's remorseful. I also recognize that there are collateral effects of the conviction, the sex offender registration, the felony conviction, as well as pretrial restrictions on the defendant's liberty during this fairly lengthy period since the defendant was arrested.

However, to serve the purposes of just punishment and respect for the law, I do not think I can justify a sentence with no prison time. I don't think a sentence of 20 years is necessary or even a sentence of two years or even a sentence of one year, but I think this is a case where some prison time is necessary given the conduct, given the defendant's level of culpability, given what happened here just to serve the purpose of just punishment.

I know I sentenced Ms. Jaquez yesterday to time served, but I think there are some differences in those cases. One, she was 18 at the time. She was mentally challenged. She was engaged in conduct with a 1-year-old versus a 10-year-old. Significantly, there's a culpability difference because of the difference in willingness to engage in the conduct, and I think that's what really calls for some period of incarceration.

For those reasons, I do intend to sentence the defendant to four months' imprisonment. That's not a long period of time, that's a huge variance below the guidelines,

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1 and it reflects my view that the certainty of some punishment
2 is often more important than the length of imprisonment. The
3 term will be followed by five years' supervised release with
4 the conditions that I will lay out.

5 Now I would like to ask counsel, do you have any legal
6 objection to the sentence as I've indicated it?

7 MR. JOYCE: No legal objection, your Honor.

8 MS. DELL: No, your Honor.

9 THE COURT: Ms. Rivera, you are hereby sentenced to
10 four months in the custody of the Bureau of Prisons. Following
11 release, you'll be placed on supervised release for a period of
12 five years with the following conditions:

13 You will not commit another federal, state, or local
14 crime. You will not possess or use any illegal controlled
15 substance. You will submit to one drug testing within 15 days
16 of placement on supervised release and at least two drug tests
17 thereafter as directed by probation. You will cooperate in the
18 collection of DNA.

19 And the standard conditions are imposed with the
20 following special conditions:

21 First, the search condition. You will submit your
22 person, any property, residence, vehicle, papers, computer,
23 other electronic communication, data storage devices, storage
24 media and effects to a search by a United States probation
25 officer and, if needed, with the assistance of law enforcement.

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1 The search must be conducted where there's reasonable suspicion
2 concerning a violation of supervised release or unlawful
3 conduct by the defendant. Failure to submit to a search may be
4 ground for revocation. You will also participate in an
5 outpatient mental health treatment program approved by the
6 probation office. You must continue to take any prescribed
7 medications unless otherwise instructed by the provider.

8 You shall undergo a sex specific evaluation and
9 participate in an outpatient sex offender treatment and/or
10 outpatient mental health treatment program approved by the
11 probation office as set forth in the presentence report. You
12 shall abide by all rules, requirements, and conditions of the
13 sex offender treatment program, including submission to
14 polygraph testing and refraining from accessing websites,
15 chatrooms, messaging, or social networking sites to the extent
16 that the offender treatment program determines that such access
17 would be detrimental to treatment.

18 You shall comply with federal and state laws regarding
19 registration as a sex offender.

20 You are restricted from viewing, accessing, possessing
21 and/or downloading any sexually explicit material involving
22 minors, including those created by the method of morphing or
23 other image creation format.

24 You must not have deliberate contact with any child
25 under 18 years of age unless approved by the probation office.

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1 You may not have deliberate contact with the victim in this
2 case unless approved by the probation office.

3 You'll report to the nearest probation office within
4 72 hours of release and you'll be supervised by the district of
5 residence.

6 I'm waiving a fine because I find you're not able to
7 pay a fine. However, there's a \$100 special assessment. The
8 JVTA and AVAA assessments are waived.

9 You will surrender to the facility designated by the
10 Bureau of Prisons on November 6th, 2023 by 2 o'clock p.m.

11 I'm required to advise you of your right to appeal.

12 You do have the right to appeal from your conviction
13 and sentence except to the extent you've waived that right as
14 part of your plea agreement. And if you can cannot pay the
15 costs to appeal, you may apply for leave to appeal without
16 payment of costs. Any appeal must be filed within 14 days.

17 Are there any open counts or indictments?

18 MS. DELL: Yes, your Honor. The government moves to
19 dismiss them.

20 THE COURT: Open counts and underlying indictments are
21 dismissed.

22 Is there anything further from the government?

23 MS. DELL: No, your Honor.

24 THE COURT: Is there anything further from the
25 defense?

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1 MR. JOYCE: No.

2 THE COURT: Thank you. We're adjourned.

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